

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Subsection (b)(91.1) of Section 7.50
Title 14, California Code of Regulations
Re: Klamath River Sport Fishing Regulations

- I. Date of Initial Statement of Reasons: January 5, 2005
- II. Date of Pre-adoption Statement of Reasons: April 4, 2005
- III. Date of Final Statement of Reasons: May 10, 2005
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: February 4, 2005
Location: San Diego
 - (b) Discussion Hearing: Date: March 18, 2005
Location: Oakland
 - (c) Adoption Hearing: Date: May 5, 2005
Location: Sacramento
- V. Update:

The Department submitted a Pre-adoption Statement of Reasons (PA) on April 4, 2005. The options were added in response to the Pacific Fisheries Management Council and the Fish and Game Commission (FGC) tentative adoption of 1,262 fish quota for fall-run Chinook salmon in the Klamath River basin. This allocation represents a substantial reduction from the quota established in 2004. Due to the reduced quota the FGC directed the Department to develop regulatory options designed to maintain the harvest of fall-run Chinook salmon over 22 inches total length in the Klamath River through Labor Day (September 5, 2005) weekend. All three options reduce the number of days per week anglers would be allowed to retain a Chinook salmon over 22 inches total length combined with a reduction in the weekly possession limit.

Since the PA was noticed, members of the fishing community have reviewed the document and identified some deficiencies. All three options reduce the number of days per week anglers would be allowed to retain a Chinook salmon over 22 inches total length beginning August 1, through November 30, 2005. The fishing community is concerned that the starting date of August 1st, will negatively impact their ability to

harvest spring-run Chinook salmon. The Department agrees that anglers should have full opportunity to harvest Spring-run Chinook salmon. Spring-run Chinook salmon are not managed under the fall-run Chinook salmon quota adopted by the FGC. Spring-run Chinook salmon enter the river before the fall-run and provide angling opportunities prior to the arrival of the quota managed fall-run. Therefore, anglers fishing in quota managed areas within the Klamath River basin in early August through mid-September will encounter very few fall-run fish.

The Department reviewed the run-timing of both fall-run and spring-run Chinook salmon in the Klamath River basin. Based on this analysis the Department recommended that the reduction in the number of days per week anglers would be allowed to retain a Chinook salmon over 22 inches total length be changed to the following: August 1st to August 15th from Weitchpec to the mouth of the Klamath, from August 1st to September 1st from Weitchpec to Iron Gate Hatchery, from August 1st to September 1st on the Trinity River from confluence with the Klamath to Hawkins Bar and from August 1st to September 15th from Cedar Flat to the Old Lewiston Bridge. The recommended change would increase spring-run Chinook harvest opportunities by 38 days.

The FGC adopted Option No. 2 with the spring-run date changes for the 2005 season and all other amendments that were indicated in the Pre-adoption Statement of Reasons.

Option 2 with the addition of spring-run date changes:

Anglers may retain adult Chinook salmon five days a week with a limit of no more than two adults to be retained over any period of seven consecutive days. The retention of adult Chinook salmon is prohibited on Tuesdays, and Wednesdays from Weitchpec to the mouth of the Klamath from August 15, through November 30, 2005; Weitchpec to Iron Gate Hatchery, from September 1, through November 30, 2005; Trinity River from the confluence with the Klamath to Hawkins Bar from September 1, through November 30, 2005; Cedar Flat to the Old Lewiston Bridge from September 15, through November 30, 2005. During the modified closures anglers could continue to catch and release adult Chinook salmon, harvest two Chinook salmon less than 22 inches total length per day, and retain one hatchery steelhead or one hatchery trout or one brown trout. No more than 12 Chinook salmon may be possessed, of which no more than 2 may be over 22 inches total length.

- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:
See the Department's "SUMMARY AND ANALYSIS OF PUBLIC RECOMMENDATIONS REGARDING CHANGES TO INLAND SPORT FISHING REGULATIONS FOR THE KLAMATH RIVER" received from July 1, 2004 through May 4, 2005.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Alternative No. 1.

Allowable Fishing Seasons above the Highway 96 bridge at

Weitchpec: The Department is reviewing all available data and meeting with the public to develop seasons which will equitably distribute the quota of adult Chinook salmon among all in-river non-tribal user groups throughout the Klamath River basin above the Highway 96 bridge at Weitchpec. The development of seasons will help control Chinook harvest and ensure that the total impact quota for the Klamath River basin is not exceeded. This alternative can not guarantee that anglers will neither fall short of utilizing the quota or that they will exceed it.

Alternative No. 2.

Generally More Liberal Regulations (Bag Limits, Possession Limits and Fishing Methods) Than Those Proposed:

More liberal regulations would be less desirable than those proposed because they could create risk of an intense fishery reaching or exceeding the quota in a very short time. Reaching the quota in a very short time could be damaging to the local economy. Exceeding the allowable harvest could be damaging to the Klamath River basin Chinook salmon resource.

- (b) No Change Alternative: Maintain sub-basin monitoring and quotas. Current regulations divide equally the impact quota above the Highway 96 bridge at Weitchpec and the Trinity River. The area is further divided into three sub quotas; 1) the Highway 96 bridge at Weitchpec to 3,500 feet below Iron Gate Dam (17.0%), 2) the Trinity River from the confluence with the Klamath to Hawkins Bar (16.5%) and 3) the Trinity River from Cedar Flat to Old Lewiston Bridge (16.5%). The current harvest

distribution requires the Department to estimate angler harvest of adult Chinook on a real-time basis. Due to budgetary constraints, the Department does not anticipate the ability to conduct real-time monitoring on Klamath River above the Highway 96 bridge at Weitchpec and the Trinity River upstream from the town of Willow Creek.

- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businessmen to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact affecting businesses, including the ability of California businesses to compete with businesses in other states. The preservation of Klamath River salmon stocks is necessary for the success of lower and upper Klamath River businesses which provide goods and services related to fishing. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.
- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on Private Persons or Businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Other Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Updated Informative Digest/Policy Statement Overview

Hook Size Change for Anadromous Waters of the Klamath River System: Current regulations in subsection (b)(91.1)(A)2. of Section 7.50 define Special Fishing Methods Restrictions for all anadromous waters of the Klamath River below Iron Gate Dam. These requirements restrict the use of single barbless hooks having a shank longer than 2 inches, or any multiple barbless hook having a gap between the point and shank greater than 3/4 inch. For clarification and in the interest of consistency, the Department is recommending language from Section 2.10, Hook and Weight Restrictions be incorporated in subsection (b)(91.1)(A)2. of Section 7.50. This recommendation would eliminate the 2-inch shank restrictions on single barbless hooks and create a maximum gap for single barbless hooks of 1 inch. The proposed regulation would continue to restrict the use of any multiple hooks with a gap greater than 3/4 inch. This recommendation will make fishing gear restrictions for all anadromous waters of the Klamath River system consistent with statewide restrictions for river and streams excluding the Sacramento-San Joaquin Delta.

Quota Adjustment: Under current regulations in subsection (b)(91.1)(C), the allowable Chinook salmon harvest in the Klamath River system is based on spawning run-size predictions and spawning escapement goals. The harvest and the distribution of the catch are regulated by seasons, daily and weekly bag and possession limits, and area quotas and allocations.

Annual adjustment of the quota is necessary to meet natural and hatchery escapement needs for Klamath River fall-run Chinook salmon stocks, while providing equitable harvest opportunities for ocean (sport and commercial) and river (sport and tribal) users. The total river system recreational harvest of fall-run Chinook salmon is currently regulated by a quota. In 2004, the share, or impact quota, for the Klamath River basin allowable sport catch was 4,700 adult fish (15 percent of the total allowable harvest by non-tribal fisheries, including ocean-commercial, ocean-recreational and recreational-river fisheries).

The Initial Statement of Reasons indicated a range for the allowable quota of Chinook salmon to be harvested within the Klamath River basin because at the time a harvestable quota had not been determined by the Pacific Fisheries Management Council. At the adoption hearing the Commission was notified that the PFMC had set the allowable harvest quota for adult Chinook salmon at 1,262. This number was inserted in the amended regulatory language and adopted by the Commission.

As in prior years, the river recreational fishing quota would be split evenly between the fisheries within each sub-quota areas above and below the Highway 96 bridge at Weitchpec.

Closures to Modify Allocations: The Department believes that the regulations should, if possible, allow fishing opportunities for adult fall-run Chinook salmon throughout the entire Klamath River Basin. Currently, the annual recreational impact quota is split evenly, with 50% of the quota allocated to the Klamath River below the Highway 96 bridge at Weitchpec and 50% to the remainder of the Klamath River Basin above the Highway 96 bridge at Weitchpec, including the Trinity River. Proposed regulations define three sub-quota areas above the Highway 96 bridge at Weitchpec. The three quotas ensure equitable harvest of adult fall-run Chinook in the upper Klamath and Trinity rivers.

The Fish and Game Commission tentatively adopted a 15% (1,262) fish quota for 2005 season. All closures for adult Chinook salmon will be designed to maximize and distribute the harvest of adult fall-run Chinook salmon while managing the fishery within the impact quota.

The current quota system requires the Department to monitor angler harvest of adult Chinook in each sub-quota area on a real-time basis. Due to funding and personnel reductions, the Department will be unable to deploy adequate personnel to conduct harvest monitoring in the upper Klamath River above the Highway 96 bridge at Weitchpec and the Trinity River above Willow Creek for the 2005 season. Instead, the following recommendations are based on data analysis and management experiences from previous years that estimate harvest in the upper reaches of the Klamath River Basin relative to known harvest in the lower Klamath River.

1. Klamath River Main Stem - Allowable Fishing Season from the Highway 96 Bridge at Weitchpec to 3,500 feet below Iron Gate Dam: The Department has reviewed all available Klamath Chinook harvest and run-timing data for the Klamath River from several previous years. Based on this review, the Department has developed a Harvest Predictor Model (HPM) which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean. The HPM is driven by the positive relationship between the number of fall-run Chinook salmon harvested in the lower Klamath River and the number of fish harvested in the upper river. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

2. Upper Trinity River Main Stem - Allowable Fishing Season from Old Lewiston Bridge to the Highway 299 West Bridge at Cedar Flat: The Department has reviewed all available Trinity River Chinook harvest and run-timing data for this area. Based on this review, the Department has developed a HPM which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean and the Trinity River from Lewiston Dam downstream to the confluence with the Klamath River. The HPM is driven by the positive relationship between the number of fall-run Chinook salmon harvested in the lower Klamath and Trinity Rivers and the number of fish

harvested in the upper Trinity River. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

3. Lower Trinity River Main Stem - Allowable Fishing Season from Hawkins Bar Bridge (Road to Denny) Downstream to the Mouth of the Trinity: The Department has reviewed all available Trinity River Chinook harvest and run-timing data for this area. Based on this review, the Department has developed a HPM which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean and the Trinity River from Lewiston Dam downstream to the confluence with the Klamath River. The HPM is driven by the positive relationship between the number of fall-run Chinook salmon harvested in the lower Klamath River and the number of fish harvested in the lower Trinity River. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

Options designed to maximize and distribute the harvest of adult fall-run Chinook salmon:

The Department proposed three regulatory options designed to maintain the harvest of adult Chinook salmon in the Klamath River through Labor Day (September 5, 2005) weekend. All three options are based on the in-river quota of 1,262 fish and input received from the angling community at three public meetings. The Commission adopted Option No. 2 with the spring-run date changes for the 2005 season and all other amendments that were indicated in the Pre-adoption Statement of Reasons.

Option 2 with the addition of spring-run date changes:

Anglers may retain adult Chinook salmon five days a week with a limit of no more than two adults to be retained over any period of seven consecutive days. The retention of adult Chinook salmon is prohibited on Tuesdays, and Wednesdays from Weitchpec to the mouth of the Klamath from August 15, through November 30, 2005; Weitchpec to Iron Gate Hatchery, from September 1, through November 30, 2005; Trinity River from the confluence with the Klamath to Hawkins Bar from September 1, through November 30, 2005; Cedar Flat to the Old Lewiston Bridge from September 15, through November 30, 2005. During the modified closures anglers could continue to catch and release adult Chinook salmon, harvest two Chinook salmon less than 22 inches total length per day, and retain one hatchery steelhead or one hatchery trout or one brown trout. No more than 12 Chinook salmon may be possessed, of which no more than 2 may be over 22 inches total length.

ADDENDUM TO FINAL STATEMENT OF REASONS

One brown trout is being added to the bag limit for the Trinity River main stem from the Old Lewiston bridge to the Highway 299 West bridge at Cedar Flat and for the Trinity River main stem from the Hawkins Bar Bridge (Road to Denny) to the confluence with the Klamath River [(subsections (b)(91.1)(F)6.b. and (b)(91.1)(F)6.f.)]

The regulatory text showing this proposed change was mailed to interested and affected parties on April 15, 2005; however the description of the change was inadvertently omitted from the notice.

Non-native brown trout have become well established in the Klamath River System, particularly in the Trinity River Basin. Brown trout are highly predatory and prey upon juvenile Chinook and coho salmon and steelhead trout. Allowing the take of brown trout will reduce predation on juvenile salmon and steelhead while diversifying angler harvest.

The regulatory text has been amended from that which was originally submitted as follows:

- Due to timing of approval of regulations, changed August 15 to August 26 in subsection (b)(91.1)(C)1.b.(i)
- Removed extra word “is” from proposed new language in subsection (b)(91.1)(C)1.d.(i)
- Corrected lettering for subsection (b)(91.1)(C)1.e.(i) This is a typographical error in our version of the regulations and does not need to be shown in strikeout/underline format.
- Used strikeout/underline text to show non-substantive change to subsection (b)(91.1)(C)1.e.(ii)
- Underlined “2” to designate as new text in (b)(91.1)(D)
- Underlined “**” in subsections (b)(91.1)(F)6.b. and (b)(91.1)(F)6.f. to designate as new text.
- Removed “or one brown trout” from subsections (b)(91.1)(F)6.g. and (b)(91.1)(C)6.h. because it does not appear in the current CCR. This language must be added utilizing the APA.
- Corrected lettering for subsection (b)(91.1)(F)6.i. This is a typographical error in our version of the regulations and does not need to be shown in strikeout/underline format.